

REMARKS

Claims 27-32 and 35-45 stand rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 5,610,828 (hereinafter Kodosky 1). Claims 33, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kodosky 1 in view of US patent application serial No. 2003/0034998 (hereinafter Kodosky 2). Applicant respectfully requests reconsideration of the rejections, and further requests allowance of the pending claims in view of the foregoing amendments and the following remarks.

Claims 1-26 were previously cancelled. Claims 33, 34 and 46 are presently cancelled. Thus claims 27-32, and 35-45 are pending.

The §102 rejections have been mooted in view of the respective amendments made to independent claims 27 and 32 (that include recitations of dependent claims already determined by the Examiner not be anticipated by the applied anticipatory reference) and consequently applicant will proceed to discuss the §103 rejections.

M.P.E.P. 2143.03 provides that to establish *prima facie* obviousness of a claimed invention, all the claims limitations must be taught or suggested by the prior art. All words in a claim must be considered for judging the patentability of the claim against the prior art. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending there from is nonobvious.

Claim 27 in part recites that the establishment of the directed relationships between the components is accomplished based at least on one the following relationships in a process-engineering and/or production-engineering plant: a material flow between at least two components, an energy flow between said at least two components and an information flow between said at least two components. Claim 27 further recites a graphical user interface configured to display at least one of the following: a graphical representation of the material flow between said at least two components, a graphical representation of the energy flow between said at least two components, and a representation of the information flow between said at least two components, wherein the information flow further comprises information flow from components that precede said at least two components and which runs in a direction opposite to a direction of the material flow or opposite to a direction of the energy flow to provide a graphical two-way traceability in the process-engineering and/or the production-engineering plant. Basis for the

foregoing amendment may be found at least in paragraphs 15 and 39 of the US patent application publication of the present invention.

The Examiner correctly acknowledges that Kodosky 1 fails to describe or suggest each of the operational and/or structural relationships of the claimed invention. The Examiner then applies Kodosky 2 to purportedly correct the deficiencies of Kodosky 1. However, as discussed in greater detail below, Kodosky 2 fails to correct the deficiencies of Kodosky 1. Consequently, the combination of Kodosky 1 and Kodosky 2 is not an appropriate *prima facie* combination of references for sustaining a §103 rejection of the claimed invention under the applicable standards and therefore this basis of rejection should be withdrawn.

Firstly, neither Kodosky 1 nor Kodosky 2 describes or suggests a graphical representation of energy flow between at least two components in a process-engineering and/or production-engineering plant. Thus, on this basis alone, the combination of Kodosky 1 and Kodosky 2 fails to render unpatentable the claimed invention.

Moreover, in connection with information flow from components that precede said at least two components and which runs in a direction opposite to a direction of the material flow or opposite to a direction of the energy flow to provide a graphical two-way traceability in the process-engineering and/or the production-engineering plant, the Examiner merely asserts that this would be a standard operating procedure but fails to provide any evidentiary support for his assertion.

Applicant respectfully refers to M.P.E.P. 2144.03, which states that it is never appropriate for an Examiner to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. The Examiner in the present case errs in not following the procedure provided in the M.P.E.P. Applicant expressly requests that the examiner produce evidence that notoriously supports his findings. If the examiner is relying on personal knowledge to support the finding of what is known in the art, the Examiner is requested to provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). Accordingly, applicant requests the Examiner to supply such evidence or, alternatively, to supply the type of affidavit required by the rules and the M.P.E.P. to show that it is common knowledge to provide information flow from preceding components, where the information flow runs in a direction opposite to a direction of the material flow or opposite to a

direction of the energy flow to provide a graphical two-way traceability in the process-engineering and/or the production-engineering plant,, as set forth in the claimed invention.

In view of the foregoing considerations, applicant respectfully submits that since the Office Communication does not appropriately establish a *prima facie* case for sustaining a §103 rejection, then the §103 rejections of claim 27 and claims depending (there from) should be withdrawn.

Claim 42 is directed to a method for layout-oriented acquiring of control-relevant information. In view of the amendments made to claim 42 and the discussion above, it is respectfully submitted that the combination of Kodosky 1 and Kodosky 2 is not an appropriate *prima facie* combination of references for sustaining a §103 rejection of the invention recited in claim 42 (and claims depending therefrom) and therefore this basis of rejection should also be withdrawn.

Conclusion

For the foregoing reasons, it is respectfully submitted that each of the claims pending in this application recites patentable subject matter and it is further submitted that such claims comply with all statutory requirements and thus each of such claims should be allowed.

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: 6/4/08

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